

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

**SESSION LAW 2011-52
SENATE BILL 343**

AN ACT ESTABLISHING THE COMMUNICATIONS REGULATORY REFORM AND
INVESTMENT ACT OF 2011.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-110(f1) reads as rewritten:

"(f1) Except as provided in subsection (f2) of this section, the Commission is authorized, following notice and an opportunity for interested parties to be heard, to issue a certificate to any person applying to provide local exchange or exchange access services as a public utility as defined in G.S. 62-3(23) a.6., without regard to whether local telephone service is already being provided in the territory for which the certificate is sought, provided that the person seeking to provide the service makes a satisfactory showing to the Commission that (i) the person is fit, capable, and financially able to render such service; (ii) the service to be provided will reasonably meet the service standards that the Commission may adopt; (iii) the provision of the service will not adversely impact the availability of reasonably affordable local exchange service; (iv) the person, to the extent it may be required to do so by the Commission, will participate in the support of universally available telephone service at affordable rates; and (v) the provision of the service does not otherwise adversely impact the public interest. In its application for certification, the person seeking to provide the service shall set forth with particularity the proposed geographic territory to be served and the types of local exchange and exchange access services to be provided. Except as provided in G.S. 62-133.5(f), any person receiving a certificate under this section shall, until otherwise determined by the Commission, file and maintain with the Commission a complete list of the local exchange and exchange access services to be provided and the prices charged for those services, and shall be subject to such reporting requirements as the Commission may require.

Any certificate issued by the Commission pursuant to this subsection shall not permit the provision of local exchange or exchange access service until July 1, 1996, unless the Commission shall have approved a price regulation plan pursuant to G.S. 62-133.5(a) for a local exchange company with an effective date prior to July 1, 1996. In the event a price regulation plan becomes effective prior to July 1, 1996, the Commission is authorized to permit the provision of local exchange or exchange access service by a competing local provider in the franchised area of such local exchange company.

The Commission is authorized to adopt rules it finds necessary (i) to provide for the reasonable interconnection of facilities between all providers of telecommunications services; (ii) to determine when necessary the rates for such interconnection; (iii) to provide for the reasonable unbundling of essential facilities where technically and economically feasible; (iv) to provide for the transfer of telephone numbers between providers in a manner that is technically and economically reasonable; (v) to provide for the continued development and encouragement of universally available telephone service at reasonably affordable rates; and (vi) to carry out the provisions of this subsection in a manner consistent with the public interest, which will include a consideration of whether and to what extent resale should be permitted. In adopting rules to establish an appropriate definition of universal service, the Commission shall



consider evolving trends in telecommunications services and the need for consumers to have access to high-speed communications networks, the Internet, and other services to the extent that those services provide social benefits to the public at a reasonable cost.

Local exchange companies and competing local providers shall negotiate the rates for local interconnection. In the event that the parties are unable to agree within 90 days of a bona fide request for interconnection on appropriate rates for interconnection, either party may petition the Commission for determination of the appropriate rates for interconnection. The Commission shall determine the appropriate rates for interconnection within 180 days from the filing of the petition.

Except as provided in subsections (f4) and (f5) of this section, each local exchange company shall be the universal service provider (carrier of last resort) in the area in which it is certificated to operate on July 1, 1995. Each local exchange company or telecommunications service provider with carrier of last resort responsibility may satisfy its carrier of last resort obligation by using any available technology. In continuing this State's commitment to universal service, the Commission shall, by December 31, 1996, adopt interim rules that designate the person that should be the universal service provider and to determine whether universal service should be funded through interconnection rates or through some other funding mechanism. At a time determined by the Commission to be in the public interest, the Commission shall conduct an investigation for the purpose of adopting final rules concerning the provision of universal services, and whether universal service should be funded through interconnection rates or through some other funding mechanism, and, consistent with the provisions of subsections (f4) and (f5) of this section, the person that should be the universal service provider. A local exchange company that has elected to be subject to alternative regulation under G.S. 62-133.5(l) does not have any carrier of last resort obligations.

The Commission shall make the determination required pursuant to this subsection in a manner that furthers this State's policy favoring universally available telephone service at reasonable rates."

SECTION 2. G.S. 62-302(b)(4)b. reads as rewritten:

"(b) Public Utility Rate. –

...

(4) As used in this section, the term "North Carolina jurisdictional revenues" means:

...

b. All revenues derived from retail services no longer otherwise regulated by the operation of G.S. 62-133.5(h) or G.S. 62-133.5(l) for a local exchange company or competing local provider that has elected to be regulated under ~~that subsection~~ those subsections."

SECTION 3. G.S. 62-133.5 reads as rewritten:

"§ 62-133.5. Alternative regulation, tariffing, and deregulation of telecommunications utilities.

...

(g) The following sections of Chapter 62 of the General Statutes shall not apply to local exchange companies subject to price regulation under the terms of subsection (a) of this section or electing companies subject to alternative regulation under the terms of ~~subsection (h)~~ subsection (h) or (l) of this section: G.S. 62-35(c), 62-45, 62-51, 62-81, 62-111, 62-130, 62-131, 62-132, 62-133, 62-134, 62-135, 62-136, 62-137, 62-139, 62-142, and 62-153.

...

(i) A competing local provider authorized by the Commission to do business under the provisions of G.S. 62-110(f1) may also elect to have its rates, terms, and conditions for its services determined pursuant to the ~~plan-plans~~ plan-plans described in ~~subsection (h)~~ subsection (h) or (l) of this section. However, it is provided further that any provisions of subsection (h) of this

section requiring the provision of a specific retail service or impacting the pricing of such service, including stand-alone residence service, shall not apply to competing local providers.

...

(k) To evaluate the affordability and quality of local exchange service provided to consumers in this State, a local exchange company or competing local provider offering basic local residential exchange service that elects to have its rates, terms, and conditions for its services determined pursuant to the ~~plan-plans~~ described in ~~subsection (h)~~ subsection (h) or (l) of this section shall make an annual report to the General Assembly on the state of its company's operations. The report shall be due 30 days after the close of each calendar year and shall cover the period from January 1 through December 31 of the preceding year. The Joint Legislative Utility Review Committee must review the annual reports and decide whether to recommend that the General Assembly take corrective action in response to those reports. The report shall include the following:

- (1) An analysis of telecommunications competition by the local exchange company or competing local provider, including access line gain or loss and the impact on consumer choices from ~~enactment of the Consumer Choice and Investment Act of 2009.~~ the date the local exchange company makes its election to be subject to alternative regulation under the terms of subsection (h) or (l) of this section.
- (2) An analysis of service quality based on customer satisfaction studies from ~~enactment of the Consumer Choice and Investment Act of 2009.~~ the date the local exchange company makes its election to be subject to alternative regulation under the terms of subsection (h) or (l) of this section.
- (3) An analysis of the level of local exchange rates from ~~enactment of the Consumer Choice and Investment Act of 2009.~~ the date the local exchange company makes its election to be subject to alternative regulation under the terms of subsection (h) or (l) of this section.

(k1) For a local exchange company that has made an election to be subject to alternative regulation under subsection (l) of this section, the requirement to report annually to the General Assembly under subsection (k) of this section shall no longer apply on and after the third anniversary following the date of the local exchange company's election.

(l) Notwithstanding any other provision of this Chapter, a local exchange company that is subject to rate of return regulation or subject to another form of regulation authorized under this section and who forgoes receipt of any funding from a State funding mechanism, other than interconnection rates, that may be established to support universal service as described in G.S. 62-110(f1) and whose territory is open to competition from competing local providers may elect to have its rates, terms, and conditions for its services determined pursuant to the plan described in this subsection by filing notice of its intent to do so with the Commission. The election is effective immediately upon filing. The terms "local exchange company" and "open to competition from competing local providers" shall have the same meanings as in subsection (h) of this section.

- (1) Beginning on the date the local exchange company's election under this subsection becomes effective, the Commission shall not:
 - a. Impose any requirements related to the terms, conditions, rates, or availability of any of the local exchange company's retail services, regardless of the technology used to provide these services.
 - b. Otherwise regulate any of the local exchange company's retail services, regardless of the technology used to provide these services.
 - c. Impose any tariffing requirements on any of the local exchange company's services that were not tariffed as of the date of the election, or impose any constraints on the rates of the local exchange

- company's services that were subject to full pricing flexibility as of the date of election.
- (2) A local exchange company's election under this subsection does not affect the obligations or rights of an incumbent local exchange carrier, as that term is defined by section 251(h) of the Federal Telecommunications Act of 1996 (Act), under sections 251 and 252 of the Act, or any Federal Communications Commission regulation relating to sections 251 and 252 of the Act.
- (3) A local exchange company's election under this subsection does not affect the Commission's jurisdiction concerning:
- a. Enforcement of federal requirements on the local exchange company's marketing activities as set forth in 47 U.S.C. Part 64. However, the Commission may not adopt, impose, or enforce other requirements on the local exchange company's marketing activities.
 - b. The telecommunications relay service pursuant to G.S. 62-157.
 - c. The Life Line or Link Up programs consistent with Federal Communications Commission rules and relevant orders of the North Carolina Utilities Commission.
 - d. Universal service funding pursuant to G.S. 62-110(f1).
 - e. The authority delegated to it by the Federal Communications Commission to manage the numbering resources involving that local exchange company.
 - f. Regulatory authority over the rates, terms, and conditions of wholesale services.
 - g. The Commission's authority under section 214(e) of the Federal Communications Act of 1934, consistent with Federal Communications Commission rules.
 - h. The authority of the Commission to act in accordance with federal or State laws or regulations, including those granting authority to set rates, terms, and conditions for access to unbundled network elements and to arbitrate and enforce interconnection agreements.
- (4) A local exchange company's election under this subsection does not prevent a consumer from seeking the assistance of the Public Staff of the North Carolina Utilities Commission to resolve a complaint with that local exchange company, as provided in G.S. 62-73.1."

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of April, 2011.

s/ Walter H. Dalton
President of the Senate

s/ Dale R. Folwell
Speaker Pro Tempore of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 9:55 a.m. this 26th day of April, 2011